IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

County of San Diego, et. al.,	)	No. S239907
	)	
Plaintiffs/Appellants,	)	
	)	
v.	)	
	)	
Commission on State Mandates, et al.,	)	
	)	
Defendants/Respondents.	)	

Fourth Appellate District, Division One, Docket No. D068657
San Diego County Superior Court No. 38-2014-00005050-CU-WM-CTL

APPLICATION OF CALIFORNIA PUBLIC DEFENDERS ASSOCIATION AND LAW OFFICES OF THE PUBLIC DEFENDER FOR THE COUNTY OF RIVERSIDE TO APPEAR AS AMICI CURIAE ON BEHALF OF APPELLANTS (RULE 8.200(c)) AND BRIEF OF AMICI CURIAE

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

California Public Defenders Association ("CPDA") and the Law Offices of the Public Defender for the County of Riverside ("LOPD") apply under California Rules of Court, Rule 8.200, subdivision (c) for permission to appear as *amici curiae* on behalf of Appellants, the Counties of san Diego, Los Angeles, Orange, Sacramento, and San Bernardino. This application summarizes the nature and history of your amici and our interest in the issues presented in this case and demonstrates that our brief will assist the court in the analysis and consideration of the issues presented.

I.

APPLICATION OF CPDA TO APPEAR AS *AMICUS CURIAE* ON BEHALF OF APPELLANT

A. Identification of CPDA[1]

The California Public Defenders Association is the largest and most influential association of criminal defense attorneys and public defenders in the State of California. CPDA has been a leader in continuing legal education for California defense attorneys for almost 40 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education, Criminal Law Specialization Education, and Appellate Law Specialization Education. The CPDA is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider (Bus. & Prof. Code, §6070, subd. (b)), and the only defense organization to provide biannual training on SVP defense.

The courts have granted CPDA leave to appear as amicus curiae in nearly 50 California cases which culminated in published opinions. We believe that our participation has been helpful in many important cases. (See,

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[1] The undersigned, Laura Arnold, on behalf of CPDA certifies to this Court that no party involved in this litigation has tendered any form of compensation, monetary or otherwise, for legal services related to the writing or production of this brief, and additionally certifies that no party to this litigation has contributed any monies, services, or other form of donation to assist in the production of this brief.

e.g., *People v. Romanowski* (2017) 2 Cal.5th 903 [application of Penal Code section 1170.18 to Penal Code section 484e, subdivision (d)]; *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-prelim discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal], *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [*Pitchess* procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable "parole search" without knowledge of the suspect's parole status]; *Manduley v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as amicus curiae in the United State Supreme Court in numerous cases. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

B. Statement of Interest of CPDA

CPDA has both a general and specific interest in the subject matter of this litigation. Since the inception of the Sexually Violent Predator Act ("SVPA"), in the 34 California counties in which a Public Defender's Office exists, our members have represented nearly every individual sought to be committed under the SVPA and virtually every individual who has petitioned for conditional release and/or unconditional discharge under the SVPA. As a result, CPDA is in a unique position to offer, as amicus, a comprehensive and unique practitioner's perspective of the issues presented in this case. Through this brief, CPDA will demonstrate that the duties of local government with respect to the SVPA *in no way* increased as a result of the adoption of Proposition 83 in November, 2006, and the increase in reimbursement claims emphasized by Respondents was due, not to Proposition 83's amendments to the SVPA, but rather, to the enactment of Senate Bill 1128 (September, 2006), which converted the two-year determinate term of the SVPA to an indeterminate period of commitment, and to state action and inaction which was *in no way* attributable to the electorate.

II.

APPLICATION OF LOPD TO APPEAR AS *AMICUS CURIAE*

A. Identification of LOPD

The Law Offices of the Public Defender for the County of Riverside is one of the largest Public Defender offices in California, located in one of the poorest counties in the state. As such, the LOPD is in a unique position to understand the impact the Commission's determination of the Department of Finance's test claim regarding SVPA funding will have on local government's ability to fulfill statutorily mandated duties.

B. Statement of Interest of LOPD

LOPD has both a general and specific interest in the subject matter of this litigation. With a geographic area approximately the size of the state of New Jersey and a population of more than two million people, Riverside County, a landlocked region consisting primarily of mountains and high desert, with only one large city and little industry or tourism revenue, faces ongoing and inflexible budgetary demands. As a result, county supervisors recently adopted a budget plan calling for across-the-board cuts and flattened discretionary spending for service providers, including the Public Defender,

over a period of five years.[2]

The LOPD represents the responding party in nearly every Welfare and Institutions Code section 6600 proceeding in the Riverside Superior Court. The ability of the LOPD to provide constitutionally adequate representation of criminal defendants and respondents in civil commitment proceedings, including the SVPA, has been compromised by the aforementioned budgetary issues. Unless the Commission's redetermination decision is reversed, it will be exceedingly difficult, going forward, for the LOPD to provide the level of representation to respondents in SVPA proceedings necessary to ensure that their state and federal due process guarantees are satisfied.

ISSUE PRESENTED

Did The Sexual Predator Punishment and Control Act (the voter initiative otherwise known as "Jessica's Law" or Proposition 83), which amended and reenacted provisions of the Sexually Violent Predator Act, a statutory scheme that the Commission on State Mandates had found to include reimbursable state mandates, constitute a "change in the law" sufficient to support the Commission's decision that some of those mandates

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[2] *Will there be layoffs? We answer this and other questions about Riverside County's $5.5 billion budget*, The Press-Enterprise, June 8, 2017, available online at https://www.pe.com/2017/06/18/will-there-be-layoffs-we-answer-this-and-other-questions-about-riverside-countys-5-5-billion-budget/

were no longer reimbursable by the State of California?

As explained herein, the answer is "no." Proposition 83 did not constitute a "change in the law" within the meaning of Government Code section 17570, because, while the initiative did include and amend provisions of the SVPA, it did not change any of the existing state-mandated duties imposed by the Legislature on local government.

SUMMARY OF ARGUMENT

The parties and amici have thoroughly briefed the constitutional and statutory provisions governing the State's obligation to reimburse local government for expenses deriving from state-mandated duties and the relevant body of decisional law. In summary, the State, focusing primarily on subdivision (f) of Government Code section 17556, notes that Proposition 83 included several provisions of the SVPA and amended some of those provisions, and concludes that, as a result, duties on local government stemming from included provisions are no longer state-mandated. (OBM, pp. 22-28, 39-45, RBM, pp. 8-10, 13-15.) Central to the State's argument is the fact that the initiative changed the definition of "sexually violent predator," by expanding the list of qualifying predicate offenses and eliminating the requirement that the inmate have been convicted of at least two sexually violent offenses against separate victims to be eligible for commitment under

the SVPA. (OBM, pp. 30-34, RBM, pp. 17-19.) The State contends that all costs necessary to implement the SVPA flow from the definition of "sexually violent predator"; accordingly, the initiative is now the "source" of local government's duties under the Act. (OBM, pp. 35-38.)

The Counties' briefing has a different focus. Rather than confining their analysis to the expansive language of Government Code section 17556, subdivision (f), the Counties, like the Court of Appeal, focus on the underlying governing constitutional provision and the electorate's intent in adopting that provision. The Counties' brief also discusses Government Code section 17570, subdivision (b), the statutory provision authorizing redetermination of a previously determined mandate upon a subsequent change in the law, defined by statute as a "change in law that requires a finding that an incurred cost ... is not a cost mandated by the state pursuant to Section 17556." (Govt. Code, §17570, subd. (a)(2).) (ABM, pp. 23-26.)

The apparent disconnect in the briefing seems to be due to the circularity of the relevant statutory provisions. Before reaching the propriety of the Commission's finding, upon redetermination of the Department of Finance's test claim, that provisions of the SVPA included in the text of Proposition 83 are necessary to implement or expressly included in a ballot measure and, therefore, not costs mandated by the state (Govt. Code, §

17556, subd. (f)), it must be determined that the State's redetermination was authorized. This turns on whether, with respect to the SVPA, Proposition 83 was a "subsequent change in law" which modified the state's liability under a prior test claim decision. (Govt. Code, § 17570, subd. (b).) Legally and practically speaking, such a showing cannot be made here, because, as the Court of Appeal found, Proposition 83 in no way modified the source, or the extent, of local government's duties under the SVPA.

I.

THE CONSTITUTIONALITY OF THE SVPA HAS ALWAYS HINGED ON THE ABILITY OF LOCAL GOVERNMENT TO PROVIDE THE RESOURCES NECESSARY TO GUARANTEE TO RESPONDENTS THE RIGHT TO DUE PROCESS

The enactment of the SVPA marked a significant change in the State's view of preventative detention of convicted criminals who had completed their sentences. Although prior to 1996, California law permitted civil commitment of dangerous individuals, most commitments were judicial commitments, ordered while criminal proceedings were still pending, or in

lieu of imposing a sentence.[3] Other existing commitment schemes were restricted to individuals proved to be suffering from an "intellectual disability" resulting in current dangerousness (Welf. & Inst. § 6500), individuals proved to be "gravely disabled" due to a "mental disease, defect, or disorder" (Welf & Inst. § 5008, subd. (h)(1)(B)), and prison inmates or parolees suffering from a "severe mental disorder" which was not in remission or which could not be kept in remission without treatment (Pen. Code, § 2960, et seq). None of these commitment schemes permitted the involuntary confinement of an individual due to personality or adjustment disorders. (See, e.g., Pen. Code, § 2962, subd. (a)(2).) But the SVPA did.

From its inception, the SVPA was, without question, the broadest civil commitment law California had ever seen. The statute created a procedural mechanism for the involuntary preventative detention of any

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[3] From 1967 until 1981, California law also provided for judicial commitments, prior to the imposition of sentence, of "mentally disordered sex offenders," individuals "who by reason of mental defect, disease, or disorder, [are] predisposed to the commission of sexual offenses to such a degree that [they are] dangerous to the health and safety of others". (Welf. & Inst. Code, § 6300, et. sq., repealed by Stats. 1981, c. 928.) Additionally, from 1976 until 2012, the court, in lieu of imposing sentence, could commit a person believed to be addicted to, or in immediate danger of becoming addicted to narcotics, to a narcotic detention, treatment and rehabilitation facility (former Welf & Inst. § 3050, repealed by Stats. 2012, c. 41). Today, California law still authorizes various pre-sentencing judicial commitments, including the commitment of defendants and juveniles found to be incompetent to stand trial (Pen. Code, § 1368 and Welf. & Inst. § 709), and defendants who are adjudicated not guilty by reason of insanity (Pen. Code, § 1026.)

individual who, upon completing the proscribed term of imprisonment for his crime, is found to be "sexually violent predator". The criteria for being a "sexually violent predator," as laid out in the original statute, were as follows: (1) the person must have been convicted of a sexually violent offense against two or more victims and have received a determinate sentence; and (2) the person must have "a diagnosed mental disorder" that makes him or her "a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior". (Former 6600, subd. (a), 1995 Cal. Legis. Serv. Ch. 763, § 3.) The requisite "diagnosed mental disorder" can be *any* condition, congenital or acquired, which affects the person's emotional or volitional capacity and predisposes him or her to the commission of criminal sexual acts in a degree constituting him or her a menace to the health and safety of others. (Welf. & Inst. § 6600, subd. (c).) The word "likely," in the SVPA, does not mean "more probable than not." Under the Act, a person is "likely" to reoffend if he or she "presents a substantial danger, that is, a serious and well-founded risk, that he or she will commit such crimes if free in the community." (*People v. Ghilotti* (2002) 27 Cal.4th 888, 922 ("*Ghilotti*").)[4]

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[4] In practice, a person's likelihood of reoffending with criminal sexual acts is proved at trial primarily through the opinion testimony of expert witnesses, applying clinical judgment, utilizing various actuarial and dynamic assessment tools with, at best, moderate predictive validity, to

Based on the Act's broad definition of "diagnosed mental disorder" and ambiguous definition of "likely," California's SVPA was immediately challenged on due process grounds. In *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, this Court, following the lead of the United States Supreme Court in *Kansas v. Hendricks* (1997) 521 U.S. 346, held that the SVPA adequately defines "diagnosed mental disorder" and establishes the requisite connection between impaired volitional control and future dangerousness (at the time of commitment) to withstand due process scrutiny. (*Hubbart, supra,* at p. 1153-1158, pp. 1162-1164.) In a concurring opinion, Justice Werdegar, joined by Justice Kennard, cautioned that the Act's definition of "diagnosable mental disorder" might be violative of the right to substantive due process, should the State use the Act to involuntary commit a person based on his or her prior offenses "absent 'a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal

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determine the respondent's relative risk category, and then applying the results to continually evolving probability estimates, which may or may not be applicable to individual in question. (See, e.g. *People v. Therrian* (2003) 113 Cal.App.4th 609, 615; Prentky, et al., *Sexually violent predators in the courtroom: Science on trial.* Psychology, Public Policy, and Law, Vol 12 (4), Nov 2006, 357-393; Hart, et al., *Precision of actuarial risk assessment instructions. Evaluating the "margins of error" of group v. individual predictions of violence.*, The British Journal of Psychiatry, May 2007, 190 (49), 60-65, available online at http://bjp.rcpsych.org/content/190/49/s60.full.)

behavior.' " (*Hubbart, supra,* 19 Cal.4th at p. 1181 (conc. opn. of Werdegar, J.) The concurring opinion elaborated further that a diagnosis based primarily on the person's prior offenses adds little to the reliability of the finding that the person is likely to engage in future sexually violent behavior, if released. (*Ibid.*)[5]

Following *Hubbart*, California courts continued to grapple with due process challenges to the SVPA. In *In re Leon Parker* (1998) 60 Cal.App.4th 1453, 1469-1470, the Court of Appeal concluded that, in "probable cause" hearings under the SVPA, due process requires that the court admit testimonial and written evidence offered by the proposed SVP. In *People v. Superior Court* (*Howard*) (1999) 70 Cal.App.4th 136, 154, the Court of Appeal concluded that due process guarantees do not prevent admission, at probable cause hearings, of victim hearsay statements

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[5] This concern was shared by the former Acting Clinical Director of the Department of State Hospitals' Evaluation Unit for the Sex Offender Commitment Program, Ronald Joseph Mihordin, M.D., J.D., M.S.P. In his power point presentation, given on September 7, 2011, at a conference for forensic evaluators sponsored by the Department of State Hospitals, Dr. Mihordin identified the tautology apparent in this court's *Hubbart* decision: while the SVPA precludes involuntary commitment based solely on evidence of prior crimes, for the mental health professional, the crime is often the exclusive source of findings regarding mental impairment and likelihood of future harm, and there is a real danger of evaluators concluding that an individual meets criteria for commitment based solely on his prior criminal behavior. The power point is available online at www.defenseforsvp.com/Resources/Cal...Evaluations_Mihordin.../SVP_part 3.pdf.

summarized in probation reports to show details underlying a prior conviction, because, at the hearing, the respondent will have the opportunity to challenge the reliability of the statements and present his side of the story. For similar reasons, in *People v. Otto* (2001) 26 Cal.4th 200, 210, this Court held that hearsay statements from crime victims possessing sufficient indicia of reliability may be admitted in SVP trials without violating the respondent's right to due process. All of these cases have a common thread: since its inception, the constitutionality of California's SVPA, has hinged on the ability of respondents' counsel to fulfill statutory duties and provide adequate representation.[6]

II.

DUTIES OF LOCAL GOVERNMENT STEMMING FROM THE SVPA WERE NOT CHANGED BY THE ADOPTION OF PROPOSITION 83

SVP cases are like no other cases in the justice system. They are time-intensive and resource-intensive, comparable to capital murder cases. Because the respondent's entire criminal history – indeed, his or her entire

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[6] Failure by respondents' counsel to fulfill duties mandated by the SVPA result due process violations necessitating dismissal of the petition and release of potentially dangerous individuals. (See, e.g., *People v. Litmon* (2008) 162 Cal.App.4th 383; see also "L.A. child molester to be released after spending 17 years in state hospital awaiting trial.", Los Angeles Times, Jan. 10, 2018, available online at http://www.latimes.com/local/lanow/la-me-ln-sex-offender-release-20180109-story.html.)

life – is at issue, these cases are record-intensive.

Accumulating and reviewing information regarding the respondent's entire criminal history is necessary in every SVP case, regardless of the number of qualifying sexually violent offenses a person is alleged to have committed.[7] In order to prove that a person suffers from any mental disorder included in any version of the DSM which could, conceivably, qualify him or her for civil commitment under the SVPA, proof must exist that the person experienced intense and recurring behaviors, urges or interests over a time period of at least six months. For this reason, the respondent's uncharged offenses and *all* prior convictions must be identified, and, in many cases, the underlying facts must be investigated.

Additionally, risk assessment tools, used by experts to opine as to the likelihood of sexual re-offense, focus primarily on three things; the person's chronological age at the time of release after imprisonment for a sex offense, the nature and extent of his or her prior criminality, and the facts underlying sexual offenses. A comprehensive review and investigation of the person's

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[7] In terms of resources and costs related to records-review, it makes no difference whether the respondent has one or more qualifying "sexually violent offenses". To the contrary, respondent's counsel expends minimal resources determining if his or her client has been convicted of an enumerated "sexually violent offense." This is generally established, readily, through a review of the person's official criminal history information and relevant court records, accumulated by the State prior to referral of a case for the filing of the petition.

entire criminal history is necessary to assess whether the State's opining expert's have accurately assessed the person's relative risk of sexual re-offense

The respondents' post-conviction behavior, while imprisoned, on supervision, or at liberty in the community, is also important to determining whether the person meets the criteria for commitment under the SVPA, particularly in terms of diagnosis and risk. Records and information from other sources may reflect deviant, violent, or impulsive behavior relevant to both criteria; alternately, such records may reflect that the individual is amenable to voluntary treatment, something this court has long held to be relevant in SVP proceedings. (*People v. Superior Court* (*Ghilotti*), *supra*, 27 Cal.4th at p. 927-929.)

Ongoing education and training is also necessary for SVP counsel. SVP cases are like no other cases in the justice system. To be competent, counsel must not only be skilled at trial advocacy and familiar with the applicable statutory and decision al law; in every case, SVP counsel must seek out and have access to expert instruction and opinion on relevant principles of psychiatry and psychology. Some cases call for even broader education and training related to issues like trauma, brain injury and dementia, addiction, relevant medical conditions, and sociology.

Additionally, in every case, SVP counsel must have a firm grasp of the social science and statistical principles underlying commonly used actuarial risk assessment tools, in order to identify and point out (to the judge or jury) the misuse or abuse of these instruments by State evaluators, issues regarding their validity and reliabity, and relevant information not encompassed by the instruments, such as age, medical condition, and the effect of treatment.

Additionally, SVP respondents are entitled to the assistance of expert witnesses at the probable cause hearing and at trial. (Welf. & Inst. §§ 6602, 6603, subd. (a).) These experts are retained for the purpose of determining whether the person meets the criteria for SVP commitment, in terms of diagnoses and current dangerousness (risk of sexual reoffense). They are generally called upon to review all relevant records, travel to the secured facility where the respondent is housed and examine him or her, render an opinion as to the diagnosis and risk criteria, and draft reports, stating their opinions and detailing the information on which those opinions are based. Delays in getting these cases to trial often result in the need for "updated" evaluations and generation of supplemental reports. Generally, these experts are required to travel and testify at the probable cause hearing, and again, at trial, and, because the Civil Discovery Act applies to SVP proceedings, they may also be subpoenaed and deposed by the prosecuting attorney. Given all

of this, expert fees and travel expenses in a single SVP proceeding can be quite high – it is not uncommon for an expert's final bill to respondent's counsel to be in the range of $3000-$7,000 for a single case.

The source of all of these duties and costs is *not*, as the State contends, the creation or modification of a statutory definition of a "sexually violent predator". It was and continues to be the Legislature's creation of the SVPA, a statutory scheme authorizing post-punishment deprivation of a person's liberty based on a determination that he or she is a danger to the health and safety of others (likely to sexually reoffend) due to the existence of a diagnosed mental disorder. The adoption of Proposition 83 did nothing to change this fact.

The State asserts that the SVPA amendments of Proposition 83 constituted a subsequent change in the law modifying the state's liability for SVPA expenses incurred by local government, because the definitional change of "sexually violent predator," which eliminated the original second-victim requirement, was followed by an increase in the number of inmates referred by the Department of Corrections and Rehabilitation for SVP screening, and "all those offenders are now referred to local governments" (OBM, p. 38.) This latter assertion is patently untrue. While there certainly was an increase in terms of *state* costs associated with the SVPA caused by

Proposition 83's elimination of the second-conviction criteria (*People v. Superior Court (Small)* (2008) 159 Cal.App.4th 301, 305), there was no attendant increase in terms of costs incurred by *local* government as a result of the change, because the vast majority of those screened by the Department of State Hospitals for SVP proceedings did not meet commitment criteria and, therefore, were *not* referred to county prosecuting attorneys for the filing of Welfare and Institutions Code section 6600 petitions.[8]

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[8] The vast majority of inmates screened by the Department of State Hospitals for SVP commitment are not referred to county prosecutors for commencement of commitment proceedings. From the date of the Act's implementation, in January, 1996, to January, 2009, out of 24,396 total cases referred, only 1,639 resulted in referrals to local government for filing of petitions, and in only 1,397 cases were petitions actually filed. (D'Orazio, et al., *The California Sexually Violent Predator Statute: History, Description & Areas For Improvement*, published by California Coalition on Sexual Offending (Jan., 2009), pp. 23-24, available online at https://ccoso.org/sites/default/files/CCOSO%20SVP%20Paper.pdf, citing data formerly made available by the DMH at http://www.dmh.ca.gov/Services_and_Programs/Forensic_Services/Sex_Offender_Commitment_Program). In other words, during that initial thirteen-year period, approximately 15 percent of inmates screened were actually referred for SVP proceedings and even fewer resulted in the filing of commitment petitions. Reason dictates that the percentage of cases referred *decreased* after the adoption of Proposition 83's elimination of the second-conviction qualifier due to the fact, that in only the rarest of instances, will an inmate with a single sexually violent offense conviction be found to qualify for commitment under the SVPA. To begin with, absent proof that sexually deviant behaviors, interests or urges have persisted for a period of at least six months, it would be impossible for any mental health professional to diagnose the individual with any of the paraphilias – the mental disorders generally believed to predispose a person to the commission of sex crimes. (First, Michael B., *DSM-5 and Paraphilic Disorders,* The Journal of the American Academy of Psychiatry and the Law (June 3, 2014), 42 (2), 191-

There was also an increase in SVPA mandates billing around the time that Proposition 83 was adopted and thereafter. But that increase had *nothing* to do with the amendments to the SVPA made by the initiative. That change was due to the enactment of Senate Bill 1128, and, in particular its amendment to Welfare and Institutions Code section 6604, which changed the two-year term of commitment under the SVPA to an indeterminate term, and to action or inaction by the Department of State Hospitals. (Stats. 2006, c. 337, § 56 ("SB 1128").)

The State, in asserting its post-hoc fallacy, fails to recognize the importance of SB 1128, enacted on September 20, 2006, two months prior to the adoption of Proposition 83, in terms of the increase in SVPA expenses incurred by county government. Practically speaking, SB 1128 converted all pending and future SVP cases from cases involving a two year commitment

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201, available online at http://jaapl.org/content/42/2/191.) But even in cases where diagnosis is possible, the absence of one or more prior convictions for a sexual offense would impact the inmate's actuarial risk assessment, making it unlikely that an evaluator would find a substantial danger of sexual re-offense. (Phenix, A., et al., Static-99R Coding Rules, Revised – 2016, p. 63 and p. 94, available online at static99.org/pdfdocs/Coding_manual_2016_InPRESS.pdf [0 points assigned if no prior sex offense convictions; 1-3 points assigned if prior sex offense convictions].) This is particularly true for juvenile offenders, whose sexual recidivism rates have been shown to be lower than those observed for adult sex offenders. (C. Lobanov-Rostovsky, *Recidivism of Juveniles Who Commit Sexual Offenses*, U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (July, 2015), available online at https://www.smart.gov/pdfs/JuvenileRecidivism.pdf.